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HUMAN RIGHTS COMMITTEE

Forty-sixth session

SUMMARY RECORD OF THE 1180th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 20 October 1992, at 3 p.m.

Chairman: Mr. POCAR

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Senegal

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GE.92-18021 (E)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Senegal (CCPR/C/64/Add.5)

1. The CHAIRMAN invited the members of the Committee to continue their consideration of the third periodic report of Senegal (CCPR/C/64/Add.5) and asked the Senegalese delegation to reply to the questions raised under section I of the list of issues to be taken up in connection with the consideration of the report.

2. Mr. FOFANA (Senegal), responding first of all to the concerns of Mrs. Higgins, who had regretted that the report contained no practical examples of the application of the Senegalese judicial system, said he hoped that the dialogue under way between his country's delegation and the Committee would make it possible to improve the quality of future reports. Furthermore, the Government of Senegal undertook to inform the Secretary-General of the United Nations promptly of any state of emergency which might be declared in the country in the future.

3. As to whether amnesty simply meant permitting prisoners to be released or also implied that any proceedings or investigations concerning human rights violations would not be pursued, he emphasized that in Senegal amnesty meant pardoning all persons convicted of crimes or offences and that all amnesty acts stipulated that, once the amnesty had been declared, State officials were prohibited from reverting to past events. The Government thus chose simultaneously to grant a general pardon and to discontinue any investigation into the offences committed. It would run the risk of losing its credibility if, after granting an amnesty, it resumed prosecution when it had expressed its desire to preserve social harmony in the country.

4. In reply to the question raised by Mr. Müllerson regarding the penalties imposed on police officers guilty of procedural violations, he referred first of all to paragraph 23 of the report and added that all persons whose responsibilities involved restricting the exercise of individual liberties were subject to strict supervision; consequently, any police officer who placed a person in custody was subject to extremely strict control and monitoring by the government procurator's office, the suspect's family and his lawyer. If the criminal investigation officer violated the procedural rules, which in particular required him immediately to inform the person arrested of the grounds for his arrest and also to advise the government procurator, the procedure was nullified. During the state of emergency, not only had a number of proceedings been nullified, entailing the immediate release of the individuals arrested, but the criminal investigation officers guilty of breaches of the rules had been brought before an indictment division and two of them had been dismissed for serious professional misconduct. If it was proved that violence or torture had been used, the indictment division could also initiate criminal proceedings against the criminal investigation officers responsible, who could be tried for wilfully striking and wounding or for

homicide. Thus, in 1982 seven officers from the Dakar central police station had been convicted of ill-treating a person in custody who had died from his injuries, and had been dismissed.

5. With regard to the state of emergency and the state of siege, he drew attention to a typing error in the second line of paragraph 27 of the report: the article of the Constitution in question was article 58 and not article 53. With regard to article 47 of the Constitution, which some had considered not to be in conformity with article 4 of the Covenant, he pointed out that, when the President decided to declare a state of emergency, he took care to ensure all the necessary guarantees to safeguard human rights. Thus, before any such decision was taken, the National Assembly was convened, in extraordinary session if it was not already sitting, and all the measures taken during a state of emergency could be referred to the administrative courts, which could abrogate them. In addition, the President had 15 days to submit the measures to the National Assembly, which had to ratify them and could amend their content.

6. Regarding the requisitioning of persons and property during a state of emergency, he explained that Act 69-30 of 29 April 1969 was intended to ensure the maintenance of public services, for example, health services and electricity and water supply, so as to secure the provision of services essential for public safety. Civil servants in key positions were required to remain at their posts, and refusal was punishable by law. Similarly, essential items, such as vehicles that could be used to transport troops or to maintain order, could be requisitioned if the State did not possess enough of them.

7. Mr. Müllerson had raised the question of ethnic, religious and linguistic minorities. There were indeed such minorities in Senegal, but intermingling and tolerance were such that no problem arose. All the social customs of the ethnic and linguistic minorities living throughout the national territory were taken into account in legislation. Similarly, as far as religion was concerned, although 90 per cent of Senegal's inhabitants were Muslim, and Catholics and Christians were a minority, that had not prevented Pope John Paul II from being welcomed to Senegal with all the pomp due to a religious leader. The various religious groups lived in perfect harmony and there was no actual discrimination, as defined in the Covenant. Moreover, preventive measures were adopted from the earliest years of schooling, which taught children to show tolerance and not to reject others. Civil society also helped, for example through radio broadcasts and various religious services, to encourage tolerance, brotherhood and understanding among peoples.

8. In reply to a question by Mr. Sadi concerning discrimination based on sex, he emphasized that women played an extremely important role in the Senegalese legal system. For example, three of the 16 government ministers were women, almost one quarter of the members of the National Assembly were women, the first President of the Court of Appeal was a woman and the Secretary-General of the Council of State was also a woman. Thus, there was no problem of discrimination in the public sector. In the private sector, too, many businesses were headed by women, as were numerous management companies running small- and medium-sized firms in all sectors of activity.

9. As for the right to periodic, democratic elections, there were no problems in Senegal. Elections were held periodically; the next presidential elections were scheduled for 21 February 1993 and legislative elections for May 1993. The Electoral Code had been amended to ensure that elections were reliable and their results beyond doubt. The election of the President of the Republic, who could henceforth only serve two terms, was supervised by the judges of the court of appeal and the Constitutional Council, whose President was a former judge of the International Court of Justice. Thus, all the necessary guarantees existed to ensure the satisfactory conduct of democratic elections.

10. In reply to a question by Miss Chanet concerning the Mediator of the Republic, he said that the institution had been set up in Senegal in 1991 and that the Mediator had a staff of approximately 20. Citizens could directly refer to him any questions regarding which they were in dispute with the administration, although he did not intercede when a matter was already before the courts. He recorded the citizen's application and prepared a file which he considered in conjunction with representatives of all ministerial departments. In the space of one year, he had received over 3,000 petitions from citizens and had been able to settle 400 cases to the applicants' satisfaction.

11. Miss Chanet had also requested information on the state of emergency which, according to her, had been declared in September 1992. In point of fact, there had not been a state of emergency, but measures had been adopted subsequent to an incident involving the Senegalese army and supporters of the Casamance Democratic Movement, which had only lasted a few hours. Furthermore, the advisory control commission for the state of emergency, set up under Act 69-29 of 29 April 1969, was presided over by a judge and comprised representatives of the security forces. Its role was to ensure that no restrictive measure was adopted in violation of human rights and, if it found any evidence of an abuse, it brought it to the attention of the administrative authorities. In Senegal the state of emergency solely involved a curfew for part of the night, and it was lifted as rapidly as possible.

12. As far as questions arising from article 47 of the Constitution were concerned, Senegal had made no reservations when it had ratified the Covenant, although it retained the possibility of doing so.

13. With regard to articles 152 to 154 of the Constitution, he explained that there were three matrimonial regimes: separation of property, community of property and dotal regime. For both sociological and cultural reasons, as well as in the interests of modernizing, separation of property henceforth applied for the purposes of ordinary law. Senegal was constantly modernizing, and although polygamy had not been abolished, there was a growing trend towards monogamy, essentially for economic reasons. Although the husband was still the head of the family, his position was subject to judicial control and had to be exercised in the interest of the household, to which the wife made a significant contribution. Thus joint household management had a different meaning than in Europe, but modern law and traditional law were increasingly merging.

14. In reply to Mr. Wennergren's question on the role of the Mediator of the Republic, he repeated that citizens could lodge complaints directly with the Mediator, who usually found a solution satisfactory to the applicant.

15. Regarding the role of the Constitutional Council, he noted that, after becoming independent, Senegal had faced problems stemming from the coexistence of modern law and traditional law and from the multiplicity of courts. For that reason it had been necessary to unify the law; that had been achieved to the benefit of modern law in the form of the Family Code and the Code of Civil and Commercial Obligations. Similarly, the courts had been unified. The system established had operated for 32 years until 1992, when it had appeared essential to establish specialized legal institutions. Thus the Constitutional Council had been set up and made responsible for verifying the constitutionality of acts and regulations, for supervising the election of the President of the Republic and for settling conflicts of jurisdiction between judicial bodies. The Council of State had then been established to deal with all administrative matters and to consider, without right of appeal, applications for judicial review of decisions handed down by the Court of Appeal or the regional courts. In 1992 the Supreme Council of Justice had also been reorganized; the Commission on the promotion of government prosecutors had been dissolved and reincorporated into the Supreme Council of Justice, which oversaw the careers of both judges and prosecutors. Moreover, after 28 October 1992, judges were to be elected by their peers who would sit on the new Supreme Council of Justice. In respect of litigation, the administration had the same status before the courts as an individual and it was henceforth possible to appeal to the Council of State against abuse of authority by the administration.

16. In reply to the questions put by Mr. Prado Vallejo, he said that there was no provision under Senegalese legislation for the principle of habeas corpus. In that connection, he pointed out that a control commission supervised measures adopted under the state of emergency and that any individual affected by a measure that restricted, for example, his freedom of movement could refer the matter to the commission (CCPR/C/64/Add.5, para. 28).

17. The question concerning the paralysis affecting investigations and the amnesty laws had already been answered. As to whether minors could incur the death penalty, Mr. Prado Vallejo's concerns had been addressed, as Senegal was currently preparing a new Penal Code in which it was planned to do away with the death penalty for women and minors. He noted that Senegal had ratified the Convention on the Rights of the Child.

18. He took note of Mr. Ando's wish that the report should have devoted greater attention to actual legal practice. As for information on equality between the spouses, it was to be found in the report submitted by Senegal in May 1992 under the Convention on the Elimination of All Forms of Discrimination against Women. In order to establish a political party it was necessary to subscribe to certain commitments which were set out in article 3 of the Constitution and to conform to the provisions of the Political Parties Act (CCPR/C/64/Add.5, para. 81).

19. The issue of minorities was particularly acute in Casamance. The question of how the Senegalese Government intended to address the problem had

been put: it had chosen the path of dialogue in order to favour right rather than might. However, it was torn between its devotion to human rights and its obligation to preserve the territorial integrity of the State. The Amnesty Acts of 1988 and 1991 had been promulgated precisely to take up the threads of the dialogue and to promote peace. The most recent amnesty act had been preceded by negotiations and an agreement signed in Guinea-Bissau by Guinea-Bissau, the Senegalese State and the Mouvement des forces démocratiques de Casamance (MFDC). A national peace committee had been established to preserve peace. The amnesty should in particular enable the MFDC to withdraw its troops, although their presence had led to the establishment of a new administration which duplicated the national administration, raised taxes and regulated the movement of property and individuals. In those circumstances, doubt had arisen among the population over the Government's capacity to ensure security and it had set up self-defence militias to resist the exactions of the MFDC troops. The Government had sent its troops back into Casamance to avert clashes between the militias and the MFDC forces, which had brought the region to the brink of civil war. It was in those circumstances that the serious events of September 1992 had occurred. However, the dialogue had since resumed; the peace committee was continuing its work and a regional commission was overseeing the implementation of the agreement. The Government of Senegal was seeking a legal solution to the problem of Casamance and hoped that the international community would help it in that endeavour.

20. Lastly, he said that a Senegalese citizen lost his Senegalese nationality if he proved unworthy of it or if he adopted another nationality. The procedure for withdrawing nationality was undertaken by the Ministry of Justice and confirmed by a Decree.

21. The CHAIRMAN said that consideration of the issues to be taken up under section I of the list had been completed. He invited the Senegalese delegation to reply to the questions contained in section II of the list, which read:

"II. Right to life, treatment of prisoners and other detainees, liberty and security of the person (articles 6, 7, 9 and 10)

(a) In view of the fact that only two death sentences have been pronounced in the last 30 years, is any consideration being given to the abolition of the death penalty in Senegal?

(b) In the light of article 6, paragraph 5 of the Covenant, please clarify when a person is considered a minor under article 52 of the Penal Code.

(c) Have any investigations been carried out with regard to accusations made by humanitarian organizations concerning extra-judicial executions and, if so, with what results? (See para. 32 of the report.)

(d) With reference to information contained in paragraphs 24 to 26 of the report on the rules and regulations governing the use of firearms by the police and armed forces, please provide details of the procedures that would be followed in the event of violations of these rules and regulations.

(e) Have there been any further developments, since the submission of the report, relating to the investigation of cases of torture or ill-treatment of persons deprived of their liberty? Please elaborate on measures taken to punish those found guilty, to prevent the recurrence of such acts and to disseminate information on the rights recognized in the Covenant among law enforcement officers. (See paras. 38 and 39 of the report.)

(f) Please clarify whether a lawyer has full access to his client immediately after arrest."

22. Mr. FOFANA (Senegal), replying to question (a), said that in order to abolish the death penalty it was necessary to prepare the population psychologically, as under current circumstances capital punishment was in a manner of speaking a reassuring and deterrent factor. The Government was not opposed to its abolition, as it was due to table a bill for that purpose, but it would only submit the bill when all the circumstances necessary to ensure that the bill was not rejected obtained.

23. In reply to question (b), he acknowledged that there was some legal confusion over the age of criminal responsibility, which was 13 in some cases and 18 in others. The new Code, which was currently being prepared, would settle the matter by setting the age of criminal responsibility at 18, in conformity with the provisions of the Covenant.

24. A detailed reply had already been provided to question (c) in connection with the Amnesty Act: that Act had concluded investigations into extrajudicial executions.

25. In reply to question (d) concerning the use of firearms by members of the law enforcement forces, he said that except during a state of emergency, the use of firearms in breach of the regulations set out in paragraphs 24 and 25 of the report entailed disciplinary measures as well as criminal prosecution.

26. Concerning the investigations into cases of torture or ill-treatment mentioned in question (e), his delegation explained that in the cases connected with the incidents in Casamance, investigations had been initiated, although they had been discontinued when the Amnesty Act had been promulgated. However, other cases of torture had been investigated and those responsible prosecuted, as was indicated in paragraph 38 of the report which cited specific cases.

27. Finally, in reply to question (f) concerning the possibility for a lawyer to have access to his client on police premises, he said that in 1985 when Senegal had considered amending its Penal Code it had initially been intended to allow lawyers access to their clients during the preliminary investigation by the police, but that proposal had not been adopted on the grounds that a criminal investigation officer, who worked in particular circumstances, would find it difficult to accept the presence of a lawyer overlooking the procedure. On the other hand, if the family had any reason to be concerned about anything that took place on police premises, it could request the prosecution department to take the necessary measures.

28. The CHAIRMAN invited the members of the Committee to put oral questions.

29. Mr. MAVROMMATIS said that the example of Senegal demonstrated that developing countries could effectively observe human rights and fundamental freedoms. However, the fact that it was an example for other countries in the third world meant that the Government of Senegal had certain obligations in particular the obligation to investigate allegations made against it concerning torture and extrajudicial executions, particularly when they came from humanitarian organizations that were respected for their impartiality. The Amnesty Act could not absolve the Government from that. It should carry out investigations in order to ensure that there was no repetition of such acts and to compensate the victims. He hoped that the Government of Senegal would reconsider its position on that issue.

30. He inquired whether the death penalty, provided for by the Penal Code for crimes involving death, was also provided for by the Code of Military Justice and whether there were any rules that applied during a state of emergency that might entail the death penalty. Lastly, although the Senegalese authorities did not allow a lawyer access to his client on police premises, he noted that lawyers could communicate with their clients elsewhere.

31. Mr. SERRANO CALDERA said he shared Mr. Mavrommatis' concerns, particularly with regard to the need for investigations into cases of torture and extrajudicial executions. The report (CCPR/C/64/Add.5, para. 38) indicated that some cases had been investigated and had led to judicial prosecution as a result of which penalties had been handed down. However, information from non-governmental organizations indicated that there had been far more human rights violations than those mentioned in the report. The adoption of the Amnesty Act clearly indicated a desire to turn a page in Senegal's history, but that was no reason to close the investigations. It was in the interest both of the State and of society at large to determine in what circumstances human rights violations had been committed, in order to punish the culprits and to prevent further violations. He realized that some of the situations mentioned by the Senegalese delegation were characteristic of Senegal's particular circumstances, but he was none the less convinced that they should be settled through dialogue.

32. He was also particularly concerned by the fact that a suspect could be held in custody for eight days, virtually incommunicado, and by the lack of habeas corpus. True, there was no universal procedural model and each society had to take into account its own traditions and culture, but the Senegalese legal system did not seem to offer sufficient guarantees for the protection of human rights. The Code of Criminal Procedure apparently provided some guarantees, including the right of detainees to be examined by a doctor, etc., but nevertheless human rights were insufficiently protected. He inquired by what mechanisms it was possible to prevent and punish human rights violations.

33. Mr. AGUILAR URBINA said he had two questions to put. Firstly, with regard to investigations into human rights violations, it had to be admitted that the situation was not what might be expected of a country such as Senegal, which had always provided the countries of the third world with a touchstone in terms of human rights. Cases of torture and of extrajudicial executions were not only denounced by non-governmental organizations, but

expressly mentioned in a recent report submitted to the Commission on Human Rights by the Special Rapporteur on the question of torture (E/CN.4/1992/17), which even identified a number of the victims. He stressed the need to undertake investigations into all the cases reported.

34. Secondly, with regard to the Amnesty Act, it appeared that the Act was applied somewhat differently than the amnesty acts promulgated in Latin America. In Senegal, the Amnesty Act seemed more like an "immunity" act, also known as an "impunity" act in Latin America. Such immunity acts were measures adopted by extreme right-wing regimes, for the specific purpose of preventing human rights violations from being investigated and the truth established. The Senegalese regime was not a dictatorship and the country's authorities should take care not to repeat the errors of, for example, Pinochet or the Uruguayan generals.

35. Mrs. HIGGINS associated herself with the concerns expressed by the other members of the Committee, to which she merely wished to add a number of slightly different remarks. Mr. Fofana had asked the Committee to bear in mind that a State was occasionally compelled to resort to force when it faced a violent separatist movement - which, moreover, was not necessarily representative of the community it claimed to stand for. He had also expressed the hope that the international community would assist the Senegalese authorities in finding a solution to that problem, and had added that when the Government had been compelled to choose between might and right, it had chosen the latter. She agreed that when faced with a group that expressed its will through violence, the State could resort to force. However, in her view the essence of the matter was to ensure that force, when necessary, did not go beyond the strict legal framework. In that regard, developments in Senegal seemed to form a vicious circle: armed actions by separatists had provoked excessive repression by the authorities, which had itself led to civilian deaths, torture and extrajudicial executions, following which an amnesty had been decreed for both parties. She did not believe that the solution chosen by the Government of Senegal was the right one: it could only lead to an impasse and damage Senegal's standing in the world. An alternative solution had to be found without delay.

36. Moreover, the Amnesty Act could not be interpreted as a measure that entailed an end to investigations against State officials suspected of human rights violations. In no case should that Act be considered to offer immunity from prosecution. Moreover, that issue brought to mind the current debate in South Africa, where the Government had proposed an amnesty for the members of the African National Congress in exchange for immunity from prosecution for State officials and an end to prosecutions for the totally unacceptable acts they had committed.

37. With regard to article 9 of the Covenant, she deplored the failure of Senegalese legislation to provide for habeas corpus. The fact that a person could be held incommunicado for eight days without being able to contact a lawyer during a decisive stage of the procedure opened the way to abuse.

38. She was gratified to note from paragraph 42 of the report (CCPR/C/64/Add.5) that the Senegalese Parliament was deeply concerned about the right of all accused persons to be tried within a reasonable time.

However, that right had not always been respected, particularly in the case of the Casamance separatists, some of whom had been held for two years without yet having been brought before a judge. Moreover, in the past, individuals had been held in custody and then released without trial but after a period which the Committee considered too long. She would be pleased to hear any observations by the Senegalese delegation on those points.

39. Mr. HERNDL asked for clarification in respect of the right to life in Senegal. In his view, contrary to the assertion made in paragraph 32 of the report (CCPR/C/64/Add.5), the fact that only two death sentences had been carried out in over 30 years was no answer to the charges levelled by humanitarian organizations that extrajudicial executions had occurred in Senegal. He pointed out that two issues were being run together: the application of the death penalty and extrajudicial executions. While the death penalty, despite being part of Senegalese legislation, was rarely carried out, there had been numerous extrajudicial executions in the country in the last two years, particularly in Casamance province. He asked what measures the authorities had adopted to prevent such executions.

40. He was gratified that the report devoted several paragraphs to the conditions under which law enforcement officials could use their weapons. He also took note that proceedings had been initiated against certain members of the gendarmerie guilty of human rights violations. However, there were very few such cases, and he asked what measures had been adopted in respect of all the other deaths attributable to State officials.

41. Mr. EL SHAFEI associated himself with the questions put by Mr. Mavrommatis. He stressed the importance of articles 6, 7, 9 and 10 of the Covenant, which guaranteed security and respect for the dignity of the individual. States parties should particularly concern themselves with ensuring respect for the fundamental rights proclaimed in those articles. In addition, he pointed out that Senegal was not the only country confronted by the dilemma mentioned by Mr. Fofana. Many other countries shared that dilemma, in particular his own, Egypt. In that regard, the approach advocated by Mrs. Higgins was in his view altogether appropriate. When faced with violence, it was vital that States should act in strict compliance with their domestic law, while observing their commitments under international instruments. A variety of sources had made alarming reports concerning the lack of will on the part of the Government of Senegal to order investigations into cases of torture and extrajudicial executions, on the grounds that those cases had not given rise to formal complaints. In his view, that was no justification for the lack of investigations into allegations of human rights violations. It had also been alleged that individuals detained by the army had died, in particular in the Casamance region. Such reports were extremely disturbing, and if they proved to be true, the culprits should be punished. If the alleged deeds had taken place, the authorities should remedy the situation without delay in order for Senegal once again to become the example it had been for many countries in the sphere of human rights.

42. Miss CHANET first of all pointed out that it was not possible to establish a parallel between the amnesty procedure in Senegal and that

practised in a number of Latin American countries. Nevertheless, she asked whether, after an amnesty had been proclaimed, the victims could apply to a civil court for compensation.

43. With regard to the information contained in paragraph 65 of the report, she asked whether articles 365 and 459 of the Code of Criminal Procedure were applied, and how many people had so far been compensated for arbitrary or illegal detention.

44. Mr. LALLAH said he could not endorse the argument advanced by Mr. Fofana in his reply to the question on the possibility for a lawyer to have access to his client immediately after arrest. In his view, that question was of great importance, as it referred to articles 9 and 14 of the Covenant, which were closely linked. The reasons advanced by the Senegalese delegation to justify refusal to extend that right to persons arrested was unconvincing on a number of counts. First of all, the time during which the detainee was in the hands of the police was a crucial stage in the procedure, and it was extremely important for him to be able to receive the assistance of a lawyer. The right to a defence did not begin at the trial stage, but well before, from the moment of arrest. Furthermore, allowing a suspect to have access to his lawyer from the moment of his arrest ensured the right to the presumption of innocence, guaranteed by article 14 (2) of the Covenant, as well as the right contained in article 14 (3) (g). Lastly, in order to exercise the rights set out in article 9 of the Covenant - in particular the right to challenge the lawfulness of the arrest or detention, as well as the right to compensation in case of unlawful arrest or detention - it was essential for the arrested person to be able to communicate with a lawyer from the moment of his arrest.

45. Mr. SADI asked which laws governed the amnesty procedure, whether there were any restrictions on amnesty and how many people had so far been amnestied in Senegal. He also asked what was the procedure for investigating cases of torture and summary executions. It had been said that the initiation of an investigation depended on a complaint being filed. Was that a strict requirement or could an investigation be initiated as soon as any human rights violations such as those mentioned were reported to the authorities?

46. He also inquired whether a detainee and his lawyer could confer in private or whether a third party, such as a police officer, was present.

47. Finally, he asked what was the position of the Government of Senegal with regard to the question of abortion.

48. Mr. FOFANA (Senegal) said, in reply to the questions put by Mr. Mavrommatis, that the death penalty was an ordinary law penalty laid down by article 6 of the Penal Code. Moreover, there was no relationship between the state of emergency and the death penalty. The state of emergency was introduced by decree issued by the President of the Republic when circumstances required, whereas the death penalty could in no case be decided by such an instrument.

49. His delegation concurred with those members of the Committee who had raised the issue of investigations into extrajudicial executions, torture or ill-treatment. It should be emphasized that the purpose of the amnesty laws

was not to ensure immunity from prosecution or to absolve, for example, State officials, but to restore social harmony. With regard to the questions raised by some non-governmental organizations concerning certain incidents, it should be underscored that Senegal and the non-governmental organizations cooperated on excellent terms. When the latter reported abuses, investigations were initiated in accordance with the Covenant. Accordingly, his delegation would request the Government of Senegal to initiate investigations by drawing its attention to the primacy of international commitments over the national Amnesty Act.

50. Mr. Serrano Caldera had expressed concern about the absence of habeas corpus and the duration of custody, which in certain cases could last for up to eight days. Senegal had adopted a different criminal procedure from habeas corpus. In 1985 Senegal had amended the Code of Criminal Procedure and introduced new provisions. The Committee would be informed of some of those provisions and would thus realize the extent to which the Government was concerned by the question of custody. Article 55 of the Code of Criminal Procedure stipulated that if a criminal investigation officer needed to remand a person or persons in custody for the purpose of an investigation, he could not do so for more than 24 hours. If there was serious, concordant and incriminating evidence against a person, the police were required to bring him before the government procurator or his deputy and could not remand him in custody for over 48 hours. If any physical problems arose with regard to the transfer, the government procurator had to be immediately informed in order to allow him to determine the conditions and deadlines for transfer. In both cases, the criminal investigation officer was required immediately to inform the government procurator of the measure taken by him and inform the detainee of the grounds for his remand. Persons aged between 13 and 18 remanded in custody were kept in special premises where they were isolated from adult prisoners. In all premises on which people were remanded in custody the police were required to keep a register, numbered and initialled by the government procurator's office and presented whenever requested by the magistrates responsible for monitoring compliance with that measure. Custody was thus subject to the effective control of the government procurator. The remand report gave the name of the person remanded, the date and time on which remand had begun, the grounds, the times of questioning and of arrest, and at the date and time on which the person was either released or brought before the appropriate judge. The person concerned had to countersign that information. If he refused to do so, failure to mention the fact in the report would entail nullity. The report also indicated whether custody had been extended and that the detainee had been informed of the grounds for the extension and had acquainted himself with the provisions of article 56 of the Code of Criminal Procedure which stipulated that he was entitled to be examined by a physician. Failure to mention those matters would nullify the report. The report was immediately checked and each page signed by the criminal investigation officer.

51. Whenever abuses were found to have been committed during custody, by criminal investigation officers, the government procurator or his deputy informed the procurator-general, who referred the matter to the indictment division. The latter could (arts. 213, 216 and 217 of the Penal Code) either suspend or definitively withdraw from the guilty party his status as a criminal investigation officer, or refer the file to the procurator-general

for prosecution if there had been a breach of the Penal Code. The aim of all those provisions of Senegalese law, notwithstanding the absence of habeas corpus, appeared to have been to safeguard the fundamental rights of individuals held in custody, despite the absence of a lawyer. In that connection, it had been felt that in contrast with judges, criminal investigation officers would find it difficult to accept the presence of a lawyer in view of the deadlines to which they were subject. The view had also been taken that the presence of a lawyer might disturb the progress of the investigation and lead to incidents that might jeopardize the proper procedure expected by the government procurator's office. In an interdependent world in which everything was evolving, the presence of a lawyer, to which the Committee attached such importance, would perhaps one day be possible from the moment of arrest.

52. In reply to Mr. Aguilar Urbina, who had raised the question of investigations and the report of the Special Rapporteur on the question of torture, he said that he had not yet received the report, but that when he returned to Senegal he would draw the attention of the Government of Senegal to that document and, if appropriate, ask it to make any necessary verifications. With regard to amnesty, he repeated that amnesty did not correspond to immunity from prosecution or to impunity but was a pardon. There were actually three possible ways of ending detention. The first was a presidential pardon, which put an end to the detention but did not extinguish the penalty. The second was pardon: at a time of national importance - national reconciliation, national holiday or a change of President of the Republic, for example - it might be desired to erase certain offences or convictions that had occurred during a particular period. In that case, the President of the Republic made a proposal to the National Assembly that a pardon be granted to certain individuals convicted of particular offences. Some offences could be excluded, as had been the case in 1988 of embezzlement of public funds and rape, and in another case, of corruption, embezzlement of public funds and unlawful enrichment. The third possibility was amnesty, which was in no way intended to protect State officials or agents who might have infringed human rights. His delegation would impress upon the Government the need not to interpret the amnesty law in such a way as to absolve such officials. If investigations were under way, they should be pursued.

53. In reply to Mr. Herndl, he said that extrajudicial executions should certainly not be confused with the death penalty. As to the means by which summary executions could be prevented, that would be achieved by carrying out investigations, as suggested by the members of the Committee, and possibly imposing penalties.

54. His delegation unreservedly endorsed Mr. El Shafei's remarks concerning compliance with international commitments with regard to amnesty. It would urge the Government to initiate investigations even if no complaints had been filed.

55. In reply to the questions put by Miss Chanet, he said that the amnesty did not undermine the rights of third parties (he referred, for example, to article 8 of the 1988 Amnesty Act). Furthermore, he had no knowledge of any case in which a person had been compensated for having been arbitrarily or

unlawfully detained. In one case, the Supreme Court had handed down such a decision, but he thought that it had not been carried out because the law made no provision for such compensation.

56. Mr. Sadi had asked for information on the rules by which amnesty was applied: when the act was promulgated, the Ministry of Justice prepared a circular on its implementation which was sent to all the government procurator's offices instructing them to release a particular group of detainees and to expunge their criminal records. There had been between 8 and 10 amnesties in Senegal; the 1988 amnesties had partly covered the events in Casamance and partly events connected with the elections, and the 1991 amnesties had exclusively covered events in Casamance.

57. With regard to the procedures for investigating torture or extrajudicial executions, there was no need for a complaint to be filed in order for an investigation to be initiated. Whenever the authorities were informed of such acts, they could order an investigation. Article 66 of the Code of Criminal Procedure stipulated that if a corpse was found and if the cause of death was unknown or suspect, the criminal investigation officer who received the information was required immediately to inform the government procurator. The latter went to the scene accompanied, if necessary, by persons capable of determining the nature or the circumstances of the death or sent a criminal investigation officer chosen by him. The persons ordered to accompany him swore on their honour and conscience to give their opinion. The government procurator could also request an inquiry into the causes of the death. As for meetings between detainees and lawyers, they were private in all Senegalese prisons, and were held on special premises and in the absence of warders. Letters sent by detainees were subject to censorship, but not those sent to lawyers. When an examining magistrate prohibited communication with a detainee, the prohibition applied to everyone except his lawyer, and was limited to 10 days.

58. Abortion was an offence that carried a penalty of one to five years' imprisonment. However, article 305 bis had been added to the Penal Code to authorize the use of contraceptives for family planning.

59. Mr. LALLAH asked whether abortion was authorized if the pregnancy resulted from rape.

60. Mr. FOFANA (Senegal) replied that rape had been considered a crime until 1965. It had been classified as an ordinary offence in the 1965 Penal Code, which laid down extremely severe penalties, as in certain cases it allowed neither a suspended sentence nor mitigating circumstances. The law did not authorize an abortion, but it was accepted by legal practice if the life of the mother was endangered. Abortion after a rape was possible if it was performed discreetly. Failing that, the person who had performed the abortion could be punished. A large number of abortions were performed in Senegal in cases in which rape was not involved. Provided that an abortion gave rise neither to a denunciation nor a complaint, the law did not concern itself with it. However, if a complaint was filed prosecution took place.

61. The CHAIRMAN said that consideration of section II of the list of issues had been completed. He invited the delegation of Senegal to reply to the questions put in section III, which were the following:

"III. Right to a fair trial (article 14)

(a) Please comment further on the jurisdiction and activities of the State Security Court, provide examples of cases that have been assigned to it, and clarify its relationship with ordinary courts. In particular, is it possible to appeal against decisions of that court before the ordinary courts?

(b) In the light of paragraph 58 of the report, is it possible to sentence a person in absentia and, if so, under what circumstances?"

62. Mr. FOFANA (Senegal) said that the State Security Court had been severely criticized both in Senegal and internationally on account of the rules it applied. It had comprised a government commissar who could have the prosecutors taken off a case. It had tried cases in accordance with the Code of Criminal Procedure, using drastic methods. It had taken decisions regarding its own procedural irregularities and had acted as a court of appeal over its own examining magistrate. Its decisions had been open neither to appeal nor to judicial review, the only possible remedy being to request clemency from the head of State. That court, which had contrasted sharply with the democratic process under way in Senegal, had been abolished by Act 92/31 of 4 June 1992.

63. The second question concerned conviction in absentia. In principle anyone put on trial was given the possibility to defend himself in person and to reply to questions. A whole set of measures had been introduced to ensure that accused persons appeared.

64. The first method was for the government procurator's office to send the prison governor an appearance notice addressed to the accused indicating the date of the trial; the governor summoned the detainee to his office and had him sign the summons, which was then returned to the government procurator's office. Moreover, on the day of the trial, the government procurator's office issued a warrant ordering the accused to be brought before him, pursuant to which the detainee was conducted from prison to stand trial.

65. The second method was an ordinary summons, which was generally employed in connection with flagrante delicto proceedings, when the detainee had been released on bail.

66. The third method was a summons served by a marshall, who was an officer of the court. The latter served the summons on the person himself at his home and had him sign the summons. If he was absent from his home, the marshall handed the summons to his spouse or to a neighbour who signed it and was responsible for giving it to the person concerned.

67. If the person was absent on the day of the trial, the position taken by the court would depend on the method used for the summons. If the first

method had been employed, the court would postpone the case and send a further appearance notice. If the second method had been employed, the court would order a summons to be served by a marshall. If the third method had been employed, there were two possibilities. If the marshall had served the summons on the person himself and had had him sign it, the court would take a decision to convict, which in most cases would be followed by a conviction, and an arrest warrant would be issued in order to compel the convict to appear before the court. His failure to do so was then deemed "adversarial" and he could no longer make an application to vacate judgement in order for the case to be again considered by the same court, but could only appeal. When the summons had not been served on him personally, the court could again postpone the trial and issue a new summons if the person's presence was genuinely necessary, or take a decision in which it noted "simple default" against the accused and offered him the possibility of making an application to vacate judgement should he be convicted. The case then came back before the same court. To conclude, everything possible was done to ensure that the person concerned was present at his trial.

The meeting rose at 6 p.m.